

New Open Space Residential Development Chapter that requires a simple majority vote at Town Meeting for Adoption.

XI. OPEN SPACE RESIDENTIAL DEVELOPMENT

A. PURPOSE AND INTENT

1. The primary purposes of this By-law are to:
 - a. Preserve open space, forests, and wildlife habitat;
 - b. Reduce energy consumption and greenhouse gas emissions, and mitigate of the effects of climate change;
 - c. Preserve agricultural land use;
 - d. Establish Open Space Subdivision design as a preferred alternative to conventional subdivisions, in order to consume less open land and preserve environmental resilience while providing for present and future housing needs;
 - e. Enable landowners to realize equity from development of a limited percentage of their land while preserving conservation, agricultural, forestry or recreational uses on the majority of the property;
 - f. Expedite the permitting of projects that fulfill the objectives and requirements of this By-law;
 - g. Facilitate the construction and maintenance of housing, streets, utilities, and public services in a more economical and efficient manner while minimizing the total area of disturbance of the site; and
 - h. Promote the incorporation of Low Impact Development and Green Infrastructure features into development designs.

B. APPLICABILITY

1. Open Space Subdivisions are allowed by right under zoning and may be proposed in all Residential districts. Conventional Subdivision designs, as defined in Section II, may be approved by Special Permit by the Planning Board if the applicant demonstrates that the proposed alternative development configuration provides protection of the site's environmental resources and fulfills the purposes of this Article as well or better than an Open Space Subdivision.
2. If the proposed Open Space Subdivision involves a special permit(s) for one or more common driveways, or any other use that requires a special permit, the proceedings for all such special permits and the site plan review for lot configuration shall occur in one consolidated special permit proceeding before the Planning Board.

C. YIELD: ALLOWABLE DWELLING UNITS

1. Number of Dwelling Units allowed. The base maximum number of residential units allowed in an Open Space Residential Subdivision is calculated by a formula based upon the net developable acreage of the parcel. This formula takes into account site-specific development restrictions and limitations that make some land unsuitable for development, or less suitable for development than other land. This calculation involves two steps, calculating the net acreage and dividing by the minimum conventional lot acreage in the zoning district. To determine net acreage, subtract the following from the total (gross) acreage of the parcel:

- a. Half of the acreage of land with slopes of 20% or greater;
- b. The total acreage of land subject to easements or restrictions prohibiting development, lakes, ponds, vernal pools, 100-year floodplains as most recently delineated by FEMA, Zone I and A around public or private water supplies, and all wetlands as defined in G.L. Chapter 131, Section 40 of the General Laws and any state or local regulations adopted thereunder; and
- c. Ten percent of the remaining site acreage after the areas described in C.1.a and C.1.b are removed, to account for subdivision roads and infrastructure.

The factors named above are included for net acreage calculation purposes only and do not convey or imply any regulatory constraints on development siting that are not contained in other applicable provisions of law, including this Zoning By-law.

The maximum number of allowable dwelling units in an open space subdivision on the parcel is determined by dividing the net acreage by the required acreage for a lot in the zoning district. Fractional units shall be rounded down to the nearest whole number. The required acreage for each district is one acre.

D. GENERAL REQUIREMENTS

- 1. Open Space Subdivision layout.** The developed areas and protected open space shall be placed within the parcel in a manner that best fits the characteristics of the land and the purposes of this By-law, in particular the protection of clean groundwater resources and environmental resiliency.
- 2. Housing Types.** Subdivision residential dwelling units shall be single-family structures. Duplexes may be allowed by special permit, if designed to resemble single-family homes. Duplexes will be considered as two residential dwelling units. Single-family structures or duplexes will be located on individual lots. Multiple unit arrangements on a shared lot, or a combination of individual lots and shared multiple unit lots, may be allowed by Special Permit in cases where such arrangements best serve the conservation purposes of this By-law on the specific parcel.

E. DIMENSIONAL REQUIREMENTS

Lot size and shape, residential unit placement, and other dimensional requirements within an Open Space Subdivision are flexible, subject to the following guidelines and limitations.

1. **Objectives.** Residential units shall be located and arranged in a way that advances the open space and resource conservation objectives of this By-law, i.e., to protect: views from roads and other publicly accessible points; farmland; wildlife habitat; large intact forest areas; hilltops and steep slopes; ponds, wetlands and groundwater resources; and other sensitive environmental resources.
2. **Monumentation.** Monumentation of a type consistent with the use of the open space, and approved by the Planning Board, shall clearly delineate the boundaries of the protected open space in a manner that facilitates monitoring and enforcement.
3. **Area.** There is no required minimum lot size for zoning purposes. The limiting factors on lot size and placement for each single-family structure or specially permitted duplex in an Open Space Subdivision are the need for 1) adequate water supply and sewage disposal for each residential unit, 2) protection of the quality and quantity of current and future groundwater resources on abutting properties, 3) prevention of negative impacts on wetlands on or near the subdivision, and compliance with the other provisions of this By-law.
4. **Infrastructure.** Water, wastewater infrastructure and storm water management for an OSRD shall be subject to the By-laws and rules and regulations of the Planning Board, the Board of Health, the Department of Public Works, and the Conservation Commission. To minimize environmental impacts, where practicable, residential units shall have shared or clustered septic systems.
5. **Frontage.** On existing public roads, frontage of any Open Space Subdivision lot shall be as required for a conventional lot in the relevant zoning district. On internal Open Space Subdivision roads, there is no numerical requirement for lot frontage. Each lot must have legal and functional vehicular access to an existing public road or an internal Open Space Subdivision road approved under the Subdivision Rules and Regulations, either directly across its own frontage or via a common driveway approved by special permit.
6. **Setbacks.** The minimum setback of any building from an existing public road shall be 100 feet. The minimum setback of any building from an internal Open Space Subdivision road shall be 30 feet. The minimum setback of any building from the property line of an abutting property not part of the Open Space Subdivision shall be 60 feet. The minimum distance between residential buildings within the Open Space Subdivision shall be 30 feet. The minimum

distance between an Open Space Subdivision residential building and an abutter's residential building shall be 100 feet.

F. OPEN SPACE REQUIREMENTS

- 1. Minimum area.** A minimum of 60% of the land area of the Open Space Subdivision shall be set aside as permanently conserved open space. At least half of the open space shall be "Uplands" as defined in Section II. No more than 10% of the required open space may be utilized for common water supply wells and associated infrastructure, subsurface leaching fields and other underground components of wastewater systems, rain gardens, constructed wetlands, and other decentralized stormwater management systems consistent with Low Impact Development, that serve the Open Space Subdivision, provided that the land so utilized is contiguous with undisturbed area(s) of protected open space. Treated stormwater may be discharged into the protected open space as part of an approved Low Impact stormwater management plan. All protected land must be shown on approved plans.
- 2. Contiguity of Open Space.** Preserved open space shall be contiguous to the greatest extent practicable. Noncontiguous areas of open space may be allowed if they are shown to provide better protection of areas of high conservation value or to provide continuity with open space on adjacent lands. In such cases, applicants shall attempt to connect these resource areas to the greatest extent practicable through the use of vegetated corridors. Open Space will still be considered contiguous if it is crossed by a shared driveway, roadway, or an accessory amenity such as a paved pathway or trail, as long as a functional wildlife corridor is maintained. If the open space is maintained for agricultural uses, open space areas will be considered contiguous if separated by a barn or storage shed.
- 3. Permanent Conservation of the Required Open Space.** Any land required to be set aside as open space, voluntarily preserved in excess of that required, or conserved as a condition of site plan approval, shall be permanently protected pursuant to Article 97 of the Articles of Amendment to the Constitution of the Commonwealth of Massachusetts or a perpetual restriction under MGL 184 s.31-33. Unless conveyed to the Conservation Commission, the required open space shall be subject to a permanent Conservation, Watershed, or Agricultural Preservation Restriction conforming to the standards of the Massachusetts Executive Office of Environmental Affairs, Division of Conservation Services, or Department of Agricultural Resources in accordance with G under MGL 184 s.31-33, approved by the Planning Board and Select Board and held by the Town of Rockport, the Commonwealth of Massachusetts, or a non-profit conservation organization qualified to hold conservation restrictions under MGL 184 s.31-33. Any proposed open space that does not qualify for inclusion in a Conservation Restriction, Watershed, or Agricultural Preservation Restriction or that is rejected from inclusion in these programs by the Commonwealth of Massachusetts shall be subject to a Restrictive Covenant in perpetuity under MGL c.184, s.26-30 which shall be

approved by the Planning Board and Select Board and held by or for the benefit of the Town of Rockport.

The restriction shall specify the prohibited and permitted uses of the restricted land, which would otherwise constitute impermissible development or use of the open space, consistent with the Allowable and Prohibited Uses subsections of this By-law and any permits. The restriction may permit, but the Planning Board may not require, public access or access by residents of the development to the protected land.

4. **Timing.** Any restriction or other legal document necessary to permanently conserve open space as required herein shall be recorded prior to the release of any lots in a subdivision or prior to the issuance of any building permits.
5. **Allowable Use of the Open Space.** Such land shall be perpetually kept in an open state, preserved exclusively for the purposes set forth herein and in the deed and/or in the restriction, and maintained in a manner which will ensure its suitability for its intended purposes. Proposed use(s) of the open space consistent with this section shall be specified in the application.
 - a. The open space shall be used for wildlife habitat and conservation and/or the following additional purposes or a combination of these uses, and shall be served by suitable access for such purposes: historic preservation, outdoor education, and passive recreation. Use of the open space for agriculture, horticulture or forestry shall be allowed if the land was in such use at the time of approval of the Definitive Plan. A portion of the open space may be used for new agricultural activities, provided that only organic methods are employed.
 - b. The Planning Board may permit a small portion of the open space, not to exceed five percent, to be paved or built upon (using permeable pavement and other means of retaining natural hydrology) for purposes accessory to the dedicated use or uses of such open space, so long as the conservation values of the open space are not compromised. Examples of such purposes are parking to facilitate public access for passive recreation, informational kiosks, pedestrian walks, ADA access features, and bike paths. Construction of barns or other farm structures will be allowed on five percent of the protected open space that is in agricultural or horticultural use as defined by MGL c.128, s.1A.
 - c. The open space may be used as the land subject to a restriction for the purpose of an aggregate calculation under Title 5, 310 CMR 15.000 of the State Environmental Code, MGL c.21A.
6. **Prohibited Use of the Open Space.** The open space within an Open Space Subdivision shall be perpetually kept in an open state, preserved exclusively for the purposes set forth in Section F.1.5 of this By-law, and maintained in a manner that will ensure its suitability for its intended purposes. Expressly

prohibited uses, if not specifically permitted as an allowable use, include but are not limited to the following:

- a. Constructing or placing of any temporary or permanent building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, sign, billboard or other advertising display, antenna, utility pole, tower, conduit, line or other temporary or permanent structure or facility on, above, or under the open space that is not in conformance with an authorized use of the open space (e.g., fencing, barn or other structure associated with agriculture);
- b. Mining, excavating, dredging, or removing soil, loam, peat, rock, gravel or other mineral resource or natural deposit, unless necessary to install infrastructure that is part of the approved plan;
- c. Placing, filling, storing, or dumping of soil, refuse, trash, vehicles or parts thereof, rubbish, debris, junk, waste, or other substance or material whatsoever or the installation of underground storage tanks;
- d. Cutting, removing, or destroying of trees, grasses or other vegetation unless in conformance with an allowed use such as agriculture, forestry, recreation, maintenance of healthy natural ecosystems and suppression of invasive species, or installation of infrastructure that is part of the approved plan;
- e. Subdivision; neither further division of the protected open space into lots or the use of the protected open space toward any further building requirements on this or any other lot is permitted;
- f. Activities detrimental to drainage, flood control, water conservation, water quality, erosion, soil conservation, or archeological conservation;
- g. Purposefully introducing or allowing the introduction of species of plants and animals recognized by the Executive Office of Energy and Environmental Affairs to pose a substantial risk of being invasive or otherwise detrimental to the native plant and animal species and plant communities on the property;
- h. The use, parking or storage of motorized vehicles, including all-terrain vehicles (ATVs), snowmobiles, motorcycles, and campers, except in conformance with an authorized use of the open space, ADA accessibility, or as required by the police, firefighters, or other governmental agents in carrying out their duties; and
- i. Any other use or activity which would materially impair conservation interests unless necessary in an emergency for the protection of those interests.

G. OWNERSHIP OF THE OPEN SPACE

1. At the applicant's discretion and the grantee's acceptance, the open space may be owned in fee by:

- a. A private owner for agricultural, horticultural, forestry or any other purpose not inconsistent with the conservation or agricultural restriction;
- b. A non-profit organization or agency of the Commonwealth, with their consent, whose principal purpose is the conservation of open space for any of the purposes set forth herein;
- c. The Town of Rockport, with the consent of the Board of Selectmen, under management of the Town Forest or Conservation Commission, with their consent; or
- d. A homeowners association (HOA) as defined herein, owned jointly or in common by the owners of lots or units within the Open Space Subdivision.

2. If ownership option G.1.d is selected the following shall apply:

- a. The documents organizing the HOA shall be drafted by the applicant and approved by the Planning Board before final approval of the Open Space Subdivision development, recorded prior to the issuance of building permits, comply with all applicable provisions of state law, and pass with conveyance of the lots or units in perpetuity. Each individual deed, and the deed, trust, or articles of incorporation, shall include language designed to affect these provisions.
- b. Membership must be mandatory for each property owner, who must be required by recorded covenants and restrictions to pay fees to the HOA for taxes, insurance, and maintenance of common open space, private roads, and other common facilities.
- c. The HOA must be responsible in perpetuity for liability insurance, property taxes, the maintenance of recreational and other facilities, preservation of the open space in accordance with this By-law, private roads, and any common driveways.
- d. Property owners must pay their pro rata share of the costs in subsection c above, and the assessment levied by the HOA must be able to become a lien upon individual properties within the Open Space Subdivision.
- e. The HOA must be able to adjust the assessment to meet changed needs.
- f. The applicant shall make a conditional grant to the Town of Rockport, Rockport Conservation Commission, binding upon the HOA, of the fee interest to all open space to be conveyed to the HOA. Such offer may be accepted by the Conservation Commission, at the discretion of the Select Board, upon the failure of the HOA to take title to the open space from the applicant or other current owner, upon dissolution of the HOA at any future time, or upon failure of the HOA to fulfill its maintenance obligations hereunder or to pay its real property taxes on the open space.
- g. Ownership shall be structured in such a manner that real property taxing authorities may satisfy property tax claims against the open space lands by proceeding against individual property owners in the HOA and the dwelling

units they each own.

- h. Rockport Town Counsel must find that the HOA documents presented satisfy the conditions in Subsections a through g above, and such other conditions as the Planning Board shall deem necessary.

3. Selection of ownership option G.1.a, G.1.b or G.1.d requires:

- a. The conveyance of a conservation restriction as outlined herein; and
- b. The granting of an access easement over such land sufficient to ensure access for Rockport Town officials to ensure its perpetual integrity and maintenance as agricultural, conservation, or recreation land.
Such easement shall provide that in the event the owner fails to maintain the open space in reasonable condition, town officials may, after notice to the lot owners and any grantee of a restriction, and after Board of Selectmen public hearing, enter upon such land to maintain it in order to prevent or abate a nuisance.

H. MAINTENANCE

- 1. **Maintenance standards.** The Planning Board shall require the establishment of ongoing maintenance standards as a condition of development approval to ensure that utilities are properly maintained and the open space land is not encroached upon, or used for storage or dumping of refuse, junk, or other offensive or hazardous materials. Such standards shall be enforceable by the Town against any owner of open space land, including an HOA.
- 2. **Enforcement of maintenance standards.** If the Board of Selectmen finds that the maintenance provisions are being violated to the extent that the condition of the utilities or the open land constitutes a public nuisance, it may, upon 30 days written notice to the owner/grantee, enter the premises for necessary maintenance, and the cost of such maintenance by the Town shall be assessed proportionally against the landowner or, in the case of an HOA, the owners of properties within the subdivision, and shall, if unpaid, become a property tax lien on such property or properties.

Pursuant to MGL c.40, s.58, Rockport may file a lien against the subdivision lot or lots to ensure payment for such maintenance. Pursuant to MGL c.40, s.57, Rockport may also deny any application for, or revoke or suspend a building permit or any local license or permit, due to neglect or refusal by any property owner to pay any maintenance assessments levied.

I. CONSULTANTS

In its discretion, the Planning Board may determine that the Planning Board requires the advice of outside consultants in connection with the Board's review of a proposed OSRD. Upon such determination, the Planning Board shall inform the Applicant of the funds that the Applicant shall be required to deposit in an escrow account with the Town to cover the

Board's anticipated professional fees. To continue the review process, the Applicant shall deposit with the Town the funds requested by the Planning Board for its consultant review. If the escrow becomes insufficient to reimburse the Planning Board for its consultant fees, the Applicant may be required by the Planning Board to deposit additional funds with the Town. All escrowed fees shall be deposited prior to the Planning Board's issuance of an approval under this Section. Surplus funds deposited by the Applicant shall be refunded to the Applicant within 30 days of a final determination on the application. An applicant shall have a right of appeal to the Board of Selectmen from the Planning Board's selection of an outside consultant under this section as described in MGL c.44, s.53G.

J. SUBMISSION REQUIREMENTS

In order to enable the Planning Board to determine whether or not a proposed Open Space Subdivision design (or alternative subdivision development requiring a Special Permit that deviates from the requirements for Open Space Design) satisfies the purposes and standards of this Open Space Subdivision section of the Zoning By-law and the Subdivision Rules and Regulations of the Planning Board, an applicant must present sufficient information on the environmental and open space resources for the Board to make such a determination.